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**IN THE
COURT OF APPEALS OF INDIANA**

GEORGE SISK,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 67A05-0611-CR-678
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew Headley, Judge
Cause No. 67C01-0603-FC-32

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

George Sisk appeals the sentence imposed by the trial court following his guilty plea to three counts of burglary as class C felonies.¹ Sisk raises one issue, which we revise and restate as whether the trial court properly ordered Sisk to pay restitution. We remand.²

The relevant facts follow. On August 10, 2006, Sisk pleaded guilty to three counts of robbery as class C felonies. The plea agreement provided that sentencing would be determined by the trial court but that the sentences were to run concurrently. The plea

¹ Ind. Code § 35-43-2-1 (2004).

² A copy of the presentence investigation report on white paper is located in the appellant's appendix. We remind the parties that Ind. Appellate Rule 9(J) requires that “[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).” Ind. Administrative Rule 9(G)(1)(b)(viii) states that “[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13” are “excluded from public access” and “confidential.” The inclusion of the presentence investigation report printed on white paper in his appellant’s appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

- (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked “Not for Public Access” or “Confidential.”
- (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked “Not For Public Access” or “Confidential” and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

agreement also provided that Sisk “pay reasonable restitution to all victims of all Counts, and further that any cash bond posted in this cause can be released to pay such restitution.” Appellant’s Appendix at 29. At the sentencing hearing, the trial court sentenced Sisk to serve four years in the Indiana Department of Correction with two years suspended. The trial court made restitution a condition of probation, with the amount to be determined among the parties. When the parties were unable to agree on the amount, the trial court scheduled a restitution hearing for October 16, 2006. After the restitution hearing, the trial court issued an amended restitution order providing for a total amount of \$5600. The order provided also that Sisk would work out a periodic payment schedule with the Probation Department and that \$2036 would be released from Sisk’s bond. On December 7, 2006, the trial court held a resentencing hearing, after which the trial court issued an order that Sisk serve the sentence previously ordered on September 7, 2006.

The sole issue is whether the trial court properly ordered Sisk to pay restitution. Specifically, Sisk argues that the trial court erred by not determining his ability to pay on the record. As a condition of probation, the court may require a person to “[m]ake restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.” Ind. Code § 35-38-2-2.3(a)(5). The trial court must determine a defendant’s ability to pay the amount of restitution ordered. Miller v.

State, 502 N.E.2d 92, 96 (Ind. 1986). A trial court errs when it fails to determine on the record a defendant's ability to pay restitution. Walsman v. State, 855 N.E.2d 645, 654 (Ind. Ct. App. 2006), reh'g denied.

Here, the trial court issued its amended restitution order after conducting a restitution hearing. The record contains no transcript of the hearing and no findings regarding Sisk's ability to pay. The CCS indicates that the trial court issued the amended restitution order "by agreement of the parties." Appellant's Appendix at 4. Sisk asserts, however, that "the CCS entry . . . is not an accurate reflection of [the amended restitution] order" Appellant's Reply Brief at 3. Because Sisk's restitution order is a condition of probation, the trial court must determine Sisk's ability to pay. See Walsman, 855 N.E.2d at 654 (holding that a trial court erred when it failed to determine on the record a defendant's ability to pay restitution). The record does not reflect that the trial court made this determination, and so we remand for proceedings consistent with this opinion.

For the foregoing reasons, we remand this cause to the trial court with directions to hold a hearing and to make findings on Sisk's ability to pay the ordered restitution.

Remanded with instructions.

MAY, J. and BAILEY, J. concur